EXTENSIONS OF REMARKS

WELFARE FOR GOLD MINERS

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 14, 1995

Mr. MILLER of California. Mr. Speaker, I would like to bring to the attention of all Members an article which appeared in the March 13, 1995, issue of U.S. News and World Report, and to insert in the RECORD an editorial by the editor-in-chief, Mortimer B. Zuckerman. The article, by Michael Satchell, reports on the deplorable situation now confronting Yellowstone National Park due to the onerous and archaic provisions of the 1872 mining law. Mr. Satchell describes the ill-advised efforts of a Canadian-owned mining company to open a gold mine on the outskirts of Yellowstone Park, thereby creating a potentially dangerous predicament for one of the crown jewels of our National Park System. Mr. Zuckerman's editorial confronts the absurdities of the archaic law, daring Congress to ''show some muscle about abuses that lose Federal revenues'' by taking on ''the politically powerful mining industry and its Western congressional allies'' and reforming this ''silly law''.

Mr. Speaker, this coverage by U.S. News and World Report is particularly relevant and timely, in light of the recent introduction in the Senate of yet another industry-backed bill—craftily designed to look like reform but, in reality, devised to insure that the mining industry maintains its free-ride on the public dole. Representative NICK J. RAHALL and I have also introduced legislation, H.R. 357, identical to the bill passed by the House last year on a three-to-one bipartisan vote. Last year, over 300 House Members—including 70 Republicans—voted to bring some fairness into the hard rock mining system. This year, instead of only cutting school lunches and rent money for poor working families, I hope the Republican majority will have the determination to expunge some of the welfare enjoyed by the corporate elite. Reforming the 1872 mining law by enacting H.R. 357 would be a big step in the right direction.

[From U.S. News & World Report, Mar. 13, 1995]

BURY THIS IN GRANT'S TOMB

(By Mortimer B. Zuckerman)

How's this for a dream? You are free to roam anywhere on 600 million acres of public land in the West, staking out mining claims in the happy knowledge that if you strike gold or silver or copper, you can extract your find absolutely free. And, dream on, you will have the option on purchasing the land outright at a price of no more than $5 an acre.

It's no dream. An antique called the General Mining Law of 1872, signed by President Ulysses S. Grant to encourage migration into the Rocky Mountain states, provides such beneficence. The West has long been settled, but prospectors and mining companies are still getting rich off the 1872 law, and the taxpayers are still getting robbed.

It gets worse. You could have bought—or patented—17,000 acres of oil-shale claims near Rifle, Colo., for a mere $42,000 and a month later sold the package to Shell Oil for $37 million. But someone beat you to it. And that deal was no freak. An investigation by the U.S. General Accounting Office of some 20 patents examined at random found the government had been paid $4,500 for claims worth somewhere between $14 million and $48 million. Just last year the Secretary of the Interior was infuriated to discover he was obligated to let a Canadian company acquire, for a nominal amount, Nevada land with gold reserves estimated to be worth $10 billion. He called it ''the biggest heist since the days of Butch Cassidy and the Sundance Kid.''

To date, 3.2 million acres of public land—an area the size of Connecticut—have been sold. More than $230 billion in mineral reserves in 13 Western states has been given away since the passage of the 1872 law—more than 315 million ounces of gold, 5.5 billion ounces of silver, 79.5 million tons of copper, 19.2 million tons of lead and 13.9 million tons of zinc. Today, as much as $4 billion worth of hard-rock materials is taken out every year. The language of the law is such that a lot of ''mining'' land has been bought, then used to build everything from private homes to gambling casinos and luxury resorts. The not-so-funny name for all this is the Great Terrain Robbery.

Injury is added to insult. The law contains no environmental protection. The mining residue—some 70 billion tons of tailings—has been left exposed to the elements, polluting rivers and ground water. There are also 550,000 abandoned mines and open pits, such as the infamous Berkeley Pit in Butte, Mont.—a mile wide, a mile and a half long, half a mile deep—filled with water that is more acidic than vinegar. You know who bears the cleanup cost. Yes, you, the taxpayer. A new crisis has emerged with the plans of Noranda. Inc., a Canadian corporation with a history of environmental problems, to mine 3 miles from Yellowstone Park's northeastern boundary.

Today there is a moratorium on further land transfers. Yet nearly 400 patent applications are back up from companies that hope to slip through their claims to get their hands on $21 billion in reserves before the 1872 act is reformed.

The reformers want the mining companies to be treated like other extractive industries, which, astonishingly, they are not. First, fair prices for these patents should be determined by the marketplace; they should include the cost of reclamation and the enforcement of environmental standards. Second, there is the issue of royalties. Loggers, coal producers and offshore oil and gas companies pay royalties when they extract wealth from public land. Reformers want mining companies to pay a royalty on their ore based on gross sales. With net revenues estimated at 25 percent of gross values extracted, a royalty is easily affordable. So is compliance with environmental standards—federal standards, because oversight by the states, which the mining industry favors, has proven weak. It also makes sense to withdraw some federal lands from mining if they are close to national parks or similar natural resources.

Why has this silly law lasted this long? Because a politically powerful mining industry and its Western congressional allies have blocked any revision. The argument that it would cripple a key regional industry and costs jobs in essentially a rational for gouging the public.

Here is an opportunity for the ''new'' Republican Party. If it is determined to expunge abuses in federal spending, it should show some muscle about abuses that lose federal revenues.

SECURITIES LITIGATION REFORM ACT

SPEECH OF

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 7, 1995

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes.

Mr. STOKES. Mr. Chairman, I rise in strong opposition to H.R. 1058, the Securities Litigation Reform Act of 1995. We should not, in an attempt to decrease the amount of frivolous class action lawsuits, forsake our duty to act in the best interest of individual small investors and consumers by limiting their ability to seek redress in the courts. This ill-conceived and hurried legislation will not only fail to reform the securities litigation system in the United States, but will in fact compromise Americans' faith in our securities industry.

The bill before us today, the Securities Litigation Reform Act of 1995, will not only attempt to curtail unwanted lawsuits, but will also make it impossible for regular Americans to have access to the Federal courts. Such an assault on American citizens' rights to access to the courts is unacceptable and I will oppose this legislation for many of the same reasons I opposed H.R. 988, the Attorney Accountability Act of 1995. H.R. 1058 is a restrictive bill that will certainly undermine many of our most important efforts to provide a forum that provides legal redress for individual Americans and our ability to insure the integrity of the securities markets.

Mr. Speaker, one of the stated purposes of the Securities Litigation Reform Act is to shift fee burdens to a losing party including defrauded individual small investors. Proponents of H.R. 1058 have stated that this provision is intended to discourage frivolous class action lawsuits, and encourage parties to settle disputes prior to trial.

This bill also establishes new loopholes and limited liability provisions for brokers and firms who defraud investors. Finally, the bill contains other technical modifications that make it easier for wrongdoers to commit fraud and more difficult for investors to seek redress in the courts.

This bill is hostile to the American justice system's over 200-year-old policy that favors access to the Federal courts for citizens with a claim. Adoption of the ''loser pays'' standards in H.R. 1058 would inhibit the will of the

people by transferring all of the burden of the costs of rendering justice in the courts from the wealthy, well-connected and privileged to the individual small investor. The clear result of imposing a ''loser pays'' rule would be to destroy regular Americans' rights under the Federal security laws to have access to the Federal courts.

Mr. Speaker, by disproportionately transferring to plaintiffs the burden of the cost of pursuing securities litigation this bill is clearly in opposition to over 200 years of American common law. Furthermore, the reasoning behind this unfair and unjust bill is not supported by the facts. So-called frivolous lawsuits actually make up a minute portion of all lawsuits litigated in this Nation. Noted securities law experts like Professor Arthur R. Miller of the Harvard Law School have pointed out that: ''There is absolutely no evidence that the 1 percent of cases on the Federal court docket under the Securities Acts is any different, in terms of the problem of frivolousness, as the other 99 percent of the Federal judicial docket.''

Under current law, the Federal rules of civil procedure give judges the opportunity to hold attorneys accountable for bringing frivolous lawsuits. Rule 11 of the Federal rules of civil procedure presently authorize Federal courts to impose sanctions upon attorneys, law firms, or parties for engaging in inappropriate conduct or for bringing frivolous or harassment lawsuits. The facts clearly show that despite the fact that there were thousands of cases filed last year, in less than 1 percent of those cases did Federal judges determine that rule 11 sanctions were justified.

Mr. Speaker, we have also been told that frivolous securities lawsuits are at the crest of a wave of securities litigation that is overwhelming the courts and sapping the strength of corporate America. Neither statement could be further from the truth. This is confirmed by the testimony by the Securities and Exchange Commission's William R. McLucas, who testified that: ''According to statistics obtained from the Administrative Office of the U.S. Courts, the approximate aggregate number of securities cases—including SEC cases—filed in Federal District Court does not appear to have increased over the past two decades.'' In fact, the figures from the Administrative Office of the U.S. Courts also reveal that in 1993 there were 298 class-action lawsuits, slightly less than the 305 filed over 20 years ago in 1974.

Mr. Speaker, while I am sympathetic to the goal of eliminating frivolous securities litigation, H.R. 1058 in its present form fails to provide adequate protection or incentives to preserve the rights of victims of abuses of the securities laws, and in particular, those investors and consumers in my home State of Ohio.

As you all know, several municipalities and counties throughout the United States have been plagued by massive losses as a result of involvement in risky securities investments. My home district has not been immune to the abuses that exist in the securities brokerage industry. Due to the high risk leveraging and derivatives investments peddled by many Wall Street brokerage firms, Cuyahoga County's $1.8 billion investment pool, the Secured Asset Fund Earnings [SAFE], has been dissolved, and these investments have cost Cuyahoga County taxpayers approximately $122 million. More than 70 government agencies, including Ohio cities, counties, and school districts participated in the SAFE fund, which held more than one-fourth of its investments in these highly speculative securities. As a result of SAFE's losses and dissolution, Cuyahoga County has had to cut next year's budget by 11 percent—$35 million—and will freeze spending for 3 years after that.

This bill would clearly protect wrongdoers from lawsuits brought against them by defrauded investors. The ''loser pays'' requirements, loopholes and limited liability would make it virtually impossible for my constituents who have been victims of SAFE's collapse to seek judicial redress, should faud turn out to have contributed to its demise.

American securities markets are the envy of the world. They provide magnificent benefits to investors and businesses alike. Despite the claims of supporters of this bill that securities litigation is hampering capital markets. The facts reveal that initial public offerings have proceeded at a record pace in recent years, and a long list of notorious cases have recovered billions of dollars for thousands of defrauded investors.

Our markets attract investments because investors have confidence in securities industry honesty and efficiency. All investors are aware of the fact that there are risks attached to any investment, and these investors are willing to take such risks in exchange for the potential gain. Yet, investors are not prepared to be defrauded and swindled out of their hard-earned money. So when any investor is defrauded, the entire securities industry is placed at risk. Private securities actions actually represent an efficient and effective privatization of National Policy to counteract financial fraud. H.R. 1058 would seriously compromise such a counteraction.

Mr. Speaker, it is my belief that H.R. 1058, and the circumstances under which it is presented in this House, attempt to mislead the American people to believe that cookie cutter, simplistic solutions will cure what ails this Nation. Nothing could be further from the truth. As our Nation faces an epidemic of financial difficulties, bankruptcy and the abuse of consumer and citizens funds, the solution to these problems will not be found in quick fixes like the Securities Litigation Reform Act. The American people elected us to act in their best interest, not compromise their welfare because Government refuses to have the courage to meet its obligations. I urge my colleagues to join with me and vote against this bill.

TRIBUTE TO DOCTORS PHYLLIS AND RAY PHILLIPS

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 14, 1995

Mr. GORDON. Mr. Speaker, I rise today to pay tribute to two outstanding individuals from the Sixth District of Tennessee who are being honored upon their retirement.

Drs. Phyllis and Ray Phillips have made tremendous contributions to the field of higher education, and their leadership has been invaluable.

By their very example, Ray and Phyllis Phillips have committed their lives to helping others learn. They have taught in Tennessee and Alabama, and their talents have taken them as far away as Augsberg, Germany to lead and participate in the American schools program.

Phyllis Phillips has shared her expertise in speech pathology, audiology, and speech communication through almost 50 years of teaching in elementary and secondary schools. In 1983 she joined Cumberland University in Lebanon TN, and in her 12-year tenure, developed a working adult degree program and helped develop the Cumberland University Fine Arts Council. She is responsible for helping countless children and adults overcome their battles with speech and hearing problems.

The board of trustees of Cumberland University named Dr. Phyllis Phillips ''Professor Emeritus'' in recognition of her tremendous contributions to education, speech pathology, and communication.

Dr. Ray Phillips earned his undergraduate degree from Cumberland University in 1941. His love for his alma mater never left him, and, in 1983, he returned to Cumberland with his wife to assume the vice presidency for academic affairs. He assisted my colleague from Tennessee, Bob Clement, then president of the university, in establshing the institution as a 4-year degree program.

In 1991, he was named the 23d president of the university. Enrollments during his administration were recordbreaking, and he aided in the development of the sports medicine and fine arts programs.

Dr. Phillips was honored with his wife by the board at Cumberland in 1994. He was named ''President Emeritus'' and ''Professor Emeritus'' for his outstanding service.

I join with those at Cumberland University and Tennesseans all across the State in thanking the Phillips' for their tireless dedication and enumerable contributions. We wish for them a happy and fulfilling retirement.

COURT REPORTER FAIR LABOR AMENDMENTS OF 1995

HON. HARRIS W. FAWELL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 14, 1995

Mr. FAWELL. Mr. Speaker, I am joined by my colleague, Mr. BARRETT of Nebraska, Mr. ANDREWS, Mr. HOEKSTRA, and Mr. CHRISTENSEN, in the introduction of the court reporter fair labor amendments of 1995. The Department of Labor [DOL] has adopted a position concerning the status of official court reporters under the Fair Labor Standards Act [FLSA] which, if allowed to stand, threatens State and local courts with explosive liability costs and could force them to take actions which would result in severe job losses and reduced income for thousands of court reporters.

In most States, court reporters are typically employed by the State or local court with primary duties of taking down and reading back court proceedings. They are considered employees of the court and are typically compensated with an annual salary and benefits. While performing these duties, the court reporter—unless he or she falls within one of the FLSA's exemptions—is entitled to overtime compensation for work performed in that capacity in excess of 40 hours in a given work week.